

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1027

Introduced by Assembly Member Buchanan

February 18, 2011

An act to add the heading of Part 1 (commencing with Section 9500) to, and to add Part 2 (commencing with Section 9510) to, Division 4.8 of the Public Utilities Code, relating to local publicly owned electric utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1027, as amended, Buchanan. Local publicly owned electric utilities: utility poles and support structures.

(1) Existing law provides for the creation of local publicly owned electric utilities, which include municipal corporations, public utility districts, and irrigation districts, that furnish electric services.

This bill would require a local publicly owned electric utility to make appropriate space and capacity on and in their utility poles and support structures available for use by cable television corporations, video service providers, and telephone corporations. The bill would require fees adopted to cover the costs to provide this use, and terms and conditions of access, to meet specified requirements, and would specify the manner in which these fees and terms and conditions of access could be challenged. By imposing new duties on local utilities, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Part 1 (commencing with Section
2 9500) is added to Division 4.8 of the Public Utilities Code, to read:

3
4 PART 1. LOW-INCOME WEATHERIZATION PROGRAMS
5

6 SEC. 2. Part 2 (commencing with Section 9510) is added to
7 Division 4.8 of the Public Utilities Code, to read:

8
9 PART 2. UTILITY POLES AND SUPPORT STRUCTURES
10

11 9510. (a) The Legislature finds and declares that in order to
12 promote wireline and wireless broadband access and adoption, it
13 is in the interest of the state to ensure that local publicly owned
14 electric utilities, including irrigation districts, that own or control
15 utility poles and support structures, including ducts and conduits,
16 make available appropriate space and capacity on and in those
17 structures to cable television corporations, video service providers,
18 and telephone corporations under reasonable rates, terms, and
19 conditions.

20 (b) The Legislature further finds and declares that the oversight
21 of fees and other requirements imposed by local publicly owned
22 electric utilities as a condition of providing the space or capacity
23 described in subdivision (a) is a matter of statewide interest and
24 concern. Therefore, it is the intent of the Legislature that this part
25 supersedes all conflicting local laws and this part shall apply in
26 charter cities.

27 (c) The Legislature further finds and declares that local publicly
28 owned electric utilities should provide access to utility poles and

1 support structures with a recovery of actual costs without
2 subsidizing for-profit cable television corporations, video service
3 providers, and telephone corporations.

4 9511. (a) (1) A local publicly owned electric utility shall make
5 appropriate space and capacity on and in a utility pole and support
6 structure owned or controlled by the local publicly owned electric
7 utility available for use by a cable television corporation, video
8 service provider, or telephone corporation pursuant to reasonable
9 terms and conditions. Rates, terms, and conditions that are specified
10 in a contract executed before January 1, 2012, shall remain valid
11 until the contract, rate, term, or condition expires or is terminated
12 according to its terms, or until the parties to the agreement agree
13 to change the rate, term, or condition. If an annual fee is included
14 in a contract executed before January 1, 2012, but the amount of
15 the fee is left unspecified, the requirements of Section 9512 apply.

16 (2) A local publicly owned electric utility shall respond to a
17 request for use by a cable television corporation, video service
18 provider, or telephone corporation of a utility pole or support
19 structure owned or controlled by the local publicly owned electric
20 utility within 45 days of the request, or 60 days if the request is to
21 attach to over 300 poles. If the request is denied, the local publicly
22 owned electric utility shall provide in the response the reason for
23 the denial and the remedy to gain access to the utility pole or
24 support structure. If a request to attach is accepted, the local
25 publicly owned electric utility, within 14 days after acceptance of
26 the request, shall provide a cost estimate, based on actual cost, for
27 any necessary make-ready work required to accommodate the
28 attachment. The requesting party shall accept or reject the
29 make-ready cost estimate within 14 days. Within 60 days of
30 acceptance of the cost estimate, or within 105 days in the case of
31 a request to attach to over 300 poles, the local publicly owned
32 electric utility shall notify any existing attachers that make-ready
33 work for a new attacher needs to be performed and the attachers
34 shall move their attachments. Contractors authorized by the local
35 publicly owned electric utility may complete make-ready work
36 without the consent of the existing attachers, if the existing
37 attachers fail to move their attachments by the end of the
38 make-ready timeline requirements specified in this paragraph.

39 (3) The timelines described in paragraph (2) may be extended
40 under special circumstances upon agreement of the local publicly

1 owned electric utility and the cable television corporation, video
2 service provider, or telephone corporation.

3 (4) A local publicly owned electric utility may deny an
4 application for use of a utility pole or support structure because of
5 insufficient capacity or safety, reliability, or engineering concerns.

6 (b) If a local publicly owned electric utility has the authority
7 pursuant to other law to impose a fee to provide the use described
8 in this section, that fee shall be adopted and levied consistent with
9 the requirements of this part.

10 (c) (1) A local publicly owned electric utility may require an
11 additional one-time charge equal to three years of the annual fee
12 described in Section 9512, for attachments ~~reasonably shown to~~
13 ~~have been made after January 1, 2012, without authorization.~~ *made*
14 *without authorization that are discovered on or after January 1,*
15 *2012.*

16 (2) *A local publicly owned electric utility may remove an*
17 *attachment made without authorization, if all of the following*
18 *conditions are met:*

19 (A) *The owner of the attachment fails to pay the charge*
20 *described in paragraph (1), if that charge is applicable.*

21 (B) *The owner of the attachment does not seek approval to*
22 *attach pursuant to this part within a reasonable period of time.*

23 (C) *The owner of the attachment does not contest that the*
24 *attachment was made without authorization.*

25 (3) *An attachment of a service drop wire is not made without*
26 *authorization for the purposes of this subdivision, if the owner of*
27 *the attachment seeks approval to attach pursuant to this part within*
28 *45 days of the attachment.*

29 (d) This part does not grant additional authority to a local
30 publicly owned electric utility to impose a fee that is not otherwise
31 authorized by law.

32 9512. (a) (1) An annual fee charged by a local publicly owned
33 electric utility for the use of a utility pole by a cable television
34 corporation, video service provider, or telephone corporation shall
35 not exceed an amount determined by multiplying the percentage
36 of the total usable space that would be occupied by the attachment
37 by the annual costs of ownership of the pole and its supporting
38 anchor. As used in this paragraph and paragraph (2), “usable space”
39 means the space above the minimum grade level that can be used
40 for the attachment of wires, cables, and associated equipment. It

1 shall be presumed, subject to factual rebuttal, that a single
2 attachment occupies one foot of usable space and that an average
3 utility pole contains 13.5 feet of usable space.

4 (2) An annual fee charged by a local publicly owned electric
5 utility for use of a support structure by a cable television
6 corporation, video service provider, or telephone corporation shall
7 not exceed the local publicly owned electric utility's annual costs
8 of ownership of the percentage of the volume of the capacity of
9 the structure rendered unusable by the equipment of the cable
10 television corporation, video service provider, or telephone
11 corporation.

12 (3) As used in this subdivision, the "annual costs of ownership"
13 is the sum of the annual capital costs and annual operation costs
14 of the pole or support structure, which shall be the average costs
15 of all similar utility poles or structures owned or controlled by the
16 local publicly owned electric utility. The basis for the computation
17 of annual capital costs shall be historical capital costs less
18 depreciation. The accounting upon which the historical capital
19 costs are determined shall include a credit for all reimbursed capital
20 costs. Depreciation shall be based upon the average service life of
21 the utility pole or support structure. "Annual cost of ownership"
22 does not include costs for any property not necessary for use by
23 the cable television corporation, video service provider, or
24 telephone corporation.

25 (b) A local publicly owned electric utility shall not levy a fee
26 that exceeds the estimated amount required to provide use of the
27 utility pole or support structure for which the annual recurring fee
28 is levied. If the fee creates revenues in excess of actual costs, those
29 revenues shall be used to reduce the fee.

30 (c) If the cable television corporation, video service provider,
31 or telephone corporation requests a rearrangement of the utility
32 pole or support structure, and the local publicly owned electric
33 utility has the authority to levy fees as described in Section 9511,
34 the local publicly owned electric utility may charge a one-time
35 reimbursement fee for the actual costs incurred for the
36 rearrangement.

37 (d) A jointly owned pole, including the cost of the pole on the
38 books of the local publicly owned electric utility, is not included
39 within the requirements of this part, if a joint owner other than the
40 local publicly owned electric utility has the sole control of the

1 space that would be used by the cable television corporation, video
2 service provider, or telephone corporation.

3 9513. (a) (1) Before adopting, or increasing, a fee described
4 in Section 9512, or adopting or changing the terms and conditions
5 of access subject to this part, the local publicly owned electric
6 utility shall hold at least one open and public meeting as part of a
7 regularly scheduled meeting, at which time oral or written
8 presentations relating to the fee or term or condition of access may
9 be made.

10 (2) At least 14 days before the meeting described in paragraph
11 (1), the local publicly owned electric utility shall mail notice of
12 the time and place of the meeting, including a general explanation
13 of the matter to be considered, and a statement that the data
14 required by paragraph (3) is available, to a person or entity who
15 files a written request with the local publicly owned electric utility
16 for mailed notice of the meeting.

17 (3) At least 10 days before the meeting described in paragraph
18 (1), the local publicly owned electric utility shall make available
19 to the public data indicating the cost, or estimated cost, to make
20 utility poles and support structures available for use by a cable
21 television corporation, video service provider, or telephone
22 corporation, if adopting or increasing a fee, and shall make
23 available data and rationale for adopting or changing the terms
24 and conditions of access, if adopting or changing the terms and
25 conditions of access.

26 (b) (1) An action by a local publicly owned electric utility to
27 adopt, or increase, a fee described in Section 9512, or adopt or
28 change the terms and conditions of access subject to this part, shall
29 be taken solely by an ordinance or resolution adopted, *or by a*
30 *contract approved*, by the legislative body of the local publicly
31 owned electric utility. The legislative body of the local publicly
32 owned electric utility shall not delegate the authority to adopt or
33 increase the fee or term or condition of access to another entity or
34 board. *The legislative body of the local publicly owned electric*
35 *utility shall ensure that the customers of the local publicly owned*
36 *electric utility and the customers of the cable television*
37 *corporation, video service provider, or telephone corporation are*
38 *not subsidized by the rates, terms, and conditions proposed for*
39 *access pursuant to this part.*

(2) The legislative body of the local publicly owned electric utility shall approve the ordinance or resolution *or contract* to adopt or increase the fee, or adopt or change the terms and conditions of access subject to this part, at a subsequent open and public meeting as part of a regularly scheduled meeting, no earlier than 30 days after the initial public meeting described in subdivision (a).

(3) An action adopting a fee or increasing a fee, or adopting or changing the terms and conditions of access subject to this part, pursuant to this section shall be effective no sooner than 60 days following the final action on the adoption of the fee or fee increase or adoption or change in the terms and conditions of access.

(c) This section does not apply to a contract extension, if the terms, conditions, or rates described in the contract are not changed.

9514. (a) Any person or entity may protest the adoption or imposition of, or increase of, a fee described in Section 9512, or adoption or change in the terms and conditions of access subject to this part, by serving written notice to the governing body of the local publicly owned electric utility within 30 days of the action protested. The written notice shall contain a statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) The filing of protest pursuant to subdivision (a) shall not be a basis for the local publicly owned electric utility to withhold approval of the use of a utility pole or support structure.

9515. (a) A judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting, or increasing, a fee described in Section 9512, or adopting or changing the terms and conditions of access subject to this part, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

(b) If an ordinance, resolution, ~~or motion~~ *motion, or contract* provides for an automatic adjustment of a fee, and the automatic adjustment results in an increase in the amount of a fee, a judicial action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(c) An action by a local publicly owned electric utility or interested person shall be brought pursuant to Chapter 9

(commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(d) A person or entity shall not initiate an action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The fee or requirement will be directly imposed on the person or entity as a condition for the use of a utility pole or support structure.

(2) At least 30 days before initiating the action or proceeding, the person or entity requests the local publicly owned electric utility to provide a copy of documents that purport to establish that the fee does not exceed the amount reasonably necessary to cover the cost of the use of the utility pole or support structure, consistent with Section 9512, or that the term and conditions of access or change to the terms and conditions of access are reasonable. The local publicly owned electric utility may charge a fee for the direct costs of copying the documents requested pursuant to this paragraph.

9516. (a) A person or entity may request an audit in order to determine whether a fee described in Section 9512 exceeds the amount reasonably necessary to cover the costs to the utility of the use of a utility pole or support structure, consistent with Section 9512. If a person or entity makes that request, the local publicly owned electric utility shall retain an independent auditor to conduct an audit to determine whether the fee is reasonable, unless an audit has been performed for the same fee within the previous 12 months. The individual or entity requesting the audit shall pay for the direct costs associated with an audit made pursuant to this subdivision.

(b) To the extent that the audit determines that the amount of the fee does not meet the requirements of this part, the local publicly owned electric utility shall adjust the fee accordingly.

9517. (a) This part does not limit the authority of a local publicly owned electric utility to ensure compliance with all applicable provisions of law in determining whether to approve or disapprove use of a utility pole or support structure.

(b) The use of a utility pole or support structure by a cable television corporation, video service provider, or telephone corporation shall comply with Public Utilities Commission General Order 95 and all other applicable provisions of law.

1 SEC. 3. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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